

**Before the
Commission on Landlord-Tenant Affairs
Montgomery County , Maryland**

In the Matter of:

Christian and Patricia Henningsen
Complainants

vs.

Danny H. Schappell
Respondent

Case #: 24442

Rental Facility: 18536 Bay Leaf Way,
Germantown, MD

Rental Facility License #: 00719

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DECISION AND ORDER

The above captioned case having come before the Commission on Landlord-Tenant Affairs for Montgomery County, Maryland (the "Commission"), pursuant to Sections 29-10, 29-14, 29-41, and 29-44 of the Montgomery County Code, 2001, as amended, and the Commission having considered the testimony and evidence of record, it is therefore, this 17th day of April, 2003, found, determined, and ordered, as follows:

BACKGROUND

On May 14, 2002, Christian and Patricia Henningsen (the "Complainants"), former tenants at 18536 Bay Leaf Way, Germantown, Maryland, (the "Property"), a licensed single-family rental facility in Montgomery County, Maryland, filed a formal complaint with the Office of Landlord-Tenant Affairs within the Department of Housing and Community Affairs, (the "Department"), in which they alleged that Danny Schappell (the "Respondent"), owner of the Property, had them sign a lease agreement for the rental of the Property that: (1) allowed the Respondent to charge a late fee after the rent was five (5) days late, in violation of Section 29-27(l), *Landlord-Tenant Relations*, of the Montgomery County Code, 2001, as amended ("County Code"), which requires a minimum of ten (10) days before late fees can be charged; (2) provided for a 10% late fee, in violation of § 8-208(d)(3)(i) of the Real Property Article, Annotated Code of Maryland, 2001 as amended ("State Code"), which prohibits a late fee in excess of 5% of the amount due for the rental period; (3) reduced the amount of interest to accrue on their security deposit from 4% to 3%, in violation of § 8-203(e)(1) of the State Code; and (4) provided for the assessment of \$75.00 for each maintenance repair to the Property, in violation of Section 29-30(a)(3) of the County Code, which limits the amount of such assessments to \$50.00. The Complainants also asserted in their complaint that the water heater in the Property was defective and had ceased to operate.

Prior to the public hearing in this matter, the Complainants amended their original complaint to allege, in addition to complaints previously asserted, that after the termination of their tenancy, the Respondent: (1) failed to refund any portion of their \$915.00 security deposit plus six (6) years accrued interest (\$219.60), in violation of § 8-203(e)(1) of the State Code; and (2) assessed unjust charges against their security deposit after the termination of their tenancy, in violation of Section 8-203(f)(1) of the State Code. The Respondent was put on notice of the amended complaint by the Department (See Case Summary at pages 66 to 69 of Commission's Exhibit No. 1), and the Complainants' additional allegations regarding the handling and disposition of their security deposit were included in the Summons and Statement of Charges issued to the Respondent prior to the hearing.

Specifically, the Complainants assert that: (1) during their tenancy they paid the Respondent a 10% late fee on several occasions; (2) the Respondent gave them oral permission to paint the Property any color they desired; (3) the carpet was damaged by water that seeped into the house due to the Respondent's failure to put gutters on the house; and (4) the costs assessed against their security deposit were to repair damages that were pre-existing.

The Respondent contends that: (1) he never gave the Complainants permission to have more than one cat, or to paint the Property; (2) the Complainants failed to report defects in the Property, including plumbing leaks, during their tenancy; (3) the Complainants never paid a late fee in excess of

5%, the amount stated in the lease; (4) the damage to the carpets was caused by the Complainants' pets, including cats, birds and rabbits; and (5) the Complainants damaged the Property in excess of ordinary wear and tear, and the amount he incurred to repair the damages was far in excess of the amount of the Complainants' security deposit plus accrued interest.

The Complainants are seeking an Order from the Commission for the Respondent to: (1) refund any and all improperly assessed late fees; (2) refund costs they incurred to make maintenance repairs to the Property during their tenancy; and (3) refund their entire \$915.00 security deposit plus \$219.60 accrued interest, plus any penalties that may apply.

After determining that the complaint was not susceptible to conciliation, the Department duly referred this case to the Commission for its review, and on February 4, 2003, the Commission voted to hold a public hearing on March 11, 2003. The public hearing in the matter of Christian and Patricia Henningsen v. Danny H. Schappell, relative to Case No. 24442, commenced on March 11, 2003, and concluded on that date.

The record reflects that the Complainants and the Respondent were given proper notice of the hearing date and time. Present at the hearing and presenting testimony and evidence were the Complainant, Patricia Henningsen, on behalf of herself and her husband, Christian Henningsen, the Respondent, Danny H. Schappell, and one (1) witness he called to testify, Nancy Groom, a current tenant at another of his rental properties. Also providing testimony and evidence were six (6) witnesses called by the Commission: the Department's Inspector, Richard Safreed; Fred Jamal, Image Carpets; Maria Wolf, Agent, Remax Realty Center; Hammed Garcia, Braddeck Construction & Painting; Wendell Nixon, V.P., Presidential Heating & Air Conditioning, Inc.; and Rossen Radev, owner, Radev Construction Corporation.

Without objection from Complainant Patricia Henningsen or the Respondent, the Commission entered into the record of the hearing the case file compiled by the Department, identified as Commission's Exhibit No. 1. Also without objection, the Commission accepted into evidence at the hearing the following documents: (1) a Notice of Violation, dated May 23, 2002, offered by Housing Inspector Safreed, identified as Commission's Exhibit No. 2; (2) the original receipt from Image Carpets, # 5905, dated June 10, 2002, identified as Commission's Exhibit No. 3; (3) invoice No. 57763, dated June 17, 2002, from Presidential Heat & AC, in the amount of \$260.75, and a photocopy of Respondent's canceled check (#2284), payable to Presidential Heat & AC, in the amount of \$260.75, dated June 18, 2002, collectively identified as Commission's Exhibit No. 4; and (4) a portion of bank statement from the Respondent, identified as Commission's Exhibit No. 5.

Without objection, the Commission also accepted into evidence at the hearing the following exhibits offered by the Complainants: six (6) photographs, collectively identified as Complainants' Exhibit No. 1; (2) a letter dated March 8, 1997 from Complainants to the Respondent, identified as Complainants' Exhibit No. 2; (3) a copy of the Complainants' Chapter 13 bankruptcy plan and a copy of a Trustee's periodic report to debtor, collectively identified as Complainants' Exhibit No. 3; (4) a copy of the one-year renewal lease between the Complainants and the Respondent for the period May 1, 1998 to April 30, 1999, identified as Complainants' Exhibit No. 4.

The Commission also accepted into evidence at the hearing the following seven (7) exhibits offered by the Respondent: (1) a letter from the Complainants to the Respondent dated April 30, 1998, identified as Respondent's Exhibit No. 1; (2) a lease extension agreement, dated March 2, 2000, identified as Respondent's Exhibit No. 2; (3) a check (#1471), dated May 1, 2002, from the Complainants returned for non-sufficient funds, and a two-page bank statement, collectively identified as Respondent's Exhibit No. 3; (4) a receipt for carpet installation, in the amount of \$2,309.00, dated February 19, 1996, identified as Respondent's Exhibit No. 4; (5) a two-page receipt for painting and repairs to the Property, in the amount of \$1,427.00, dated March 15, 1996, identified as Respondent's Exhibit No. 5; (6) a receipt for cabinet installation at the Property, in the amount of \$3,639.30, dated October 7, 1996, and three money order receipts for payment, collectively identified as Respondent's Exhibit No. 6; and (7) a receipt for window glass and screen installation, in the amount of \$502.00, dated October 6, 1996, identified as Respondent's Exhibit No. 7.

FINDINGS OF FACT

1. The Respondent is the owner of the Property, and based on his testimony at the hearing, the Commission also finds that the Respondent owns and manages 10 other rental properties in Montgomery County, Maryland.

2. On March 31, 1996, the Complainants, Christian Henningsen and Patricia Henningsen (nee Brett) and the Respondent entered into a two-year lease agreement for the rental of the Property which commenced on May 1, 1996 and expired on April 30, 1998. The lease used by the Respondent is, with the same modifications, the model "Single Family Dwelling Lease" form produced by the

Montgomery County Association of Realtors (“MCAR Form #1205”), and co-sponsored by the Commission.

3. On or about March 31, 1996, the Complainants paid the Respondent a security deposit of \$915.00, which is properly received in the Lease.

4. On expiration of the initial lease term, April 30, 1998, the parties entered into a new, one-year lease, also the MCAR Form #1205, which commenced May 1, 1998, and expired on April 30, 1999. Hereinafter, the March 31, 1996 lease and the April 30, 1998 lease are collectively referred to as “the Leases.”

5. Paragraph 2 of the Leases, entitled “Additional Charges,” states, in pertinent part, that “Tenant also agrees that in the event Tenant fails to pay any installment of rent within FIVE (5) days of the date on which it is due and payable, Tenant must pay Landlord, in addition to the rent, a late charge in the amount of five percent (5%) of the unpaid rent then due.” The Commission notes that the MCAR Form #1205 lease states that a late fee can be assessed only if the tenant fails to pay the rent “within ten (10) days of the date on which it is due and payable.” The Commission finds that the Respondent altered this provision of the Leases by crossing out “ten (10)” days and handwriting in “FIVE (5)” days to allow for a late charge fee to be assessed after five (5) days, which constitutes a violation of Section 29-27(l) of the County Code, which states that the lease must “Require a minimum of 10 days before late fees may be charged.”

6. The Complainants failed to provide any probative evidence or persuasive testimony that the Respondent ever assessed, or that they ever paid, a late fee prior to the rent being ten (10) days late, and therefore, the Commission finds that although the Leases had been altered by the Respondent to allow for such a charge, the Complainants never paid a late fee to the Respondent unless the rent was at least ten (10) days late.

7. Based on the testimony of the Respondent at the hearing, the Commission finds that it is the normal business practice of the Respondent to alter the late fee provision of leases for use in Montgomery County to allow for a late fee to be charged after a tenant fails to pay rent within five (5)

days after it becomes due, and that such alteration constitutes a violation of Section 29-27(l) of the County Code.

8. Regarding the Complainants' allegation that the Respondent assessed against them a late fee in the amount of 10% of the amount due, the Commission finds that: (A) Paragraph 2 of the Leases, entitled "Additional Charges," provides for a "late fee charge in the amount of five percent (5%) of the unpaid rent...", not 10% as alleged by the Complainants; and (B) the Complainants failed to provide any probative evidence to demonstrate that they ever paid a late fee to the Respondent in excess of 5% of the unpaid rent. Therefore, the Commission finds that no such improper late fees were paid by the Complainants to the Respondent at any time during their tenancy at the Property.

9. Paragraph 3 of the Leases, entitled "Security Deposit," states, in pertinent part regarding the amount of interest that is to accrue on the Complainants' security deposit, that, "...simple interest which will accrue in the amount of THREE percent (3%) per annum..." The Commission notes that the MCAR Form #1205 lease states that security deposit interest is to accrue at a rate of 4% per annum. The Commission finds that the Respondent altered this provision of both the Leases by crossing out "four percent (4%)" and handwriting in "Three percent (3%)" which constitutes a violation of § 8-203(e)(1) of the State Code, which sets the amount of interest at 4% per annum.

10. Based on the testimony of the Respondent, the Commission finds that it is the normal business practice of the Respondent to alter the security deposit interest provision of leases to reduce the interest rate on security deposits for all rental properties he owns in Montgomery County from 4% to 3%, which constitutes a violation of § 8-203(e)(1) of the State Code.

11. Paragraph 9 of the Leases, entitled "Maintenance," subparagraph three, states, in pertinent part regarding the amount a tenant can be charged for failing to perform certain maintenance activities in the Property, that, "...Landlord/Agent has the right to complete the necessary maintenance and charge the Tenant for the expenses up to a maximum of \$75.00 for the actual cost incurred per maintenance item ..." The Commission notes that the MCAR Form #1205 lease states that the maximum amount a landlord can charge for such maintenance activities is \$50.00 per maintenance item. The Commission finds that the Respondent altered this provision of the Leases by crossing out "\$50.00" and handwriting in "\$75.00", which constitutes a violation of Section 29-30(a)(3) of the County Code, which limits the amount that a landlord may charge a tenant for such maintenance activities to \$50.00 per occurrence.

12. Based on the testimony of the Respondent, and Respondent's witness, Ms. Groom, the Commission finds that it is the normal business practice of the Respondent to alter the maintenance provision of leases for use in Montgomery County to increase the amount that a tenant can be charged for certain maintenance activities from \$50.00 to \$75.00, which constitutes a violation of Section 29-30(a)(3) of the County Code.

13. By a letter dated March 2, 2000, signed by Complainant Patricia Henningsen and the Respondent, the parties extended the term of the Leases through April 30, 2002.

14. By a letter dated May 2, 2002, the Complainants advised the Respondent of their intention to vacate the Property as of May 31, 2002.

15. The Complainants vacated the Property as of May 31, 2002, having paid rent in full to the Respondent through that date.

16. By a letter dated June 14, 2002, within 45 days after the termination of their tenancy, the Respondent advised the Complainants regarding the return of their security deposit that, "In over 25 years of renting properties I have never seen a unit as filthy as this property. Because of the above list of items your security deposit will not be returned, total amount of damage to the unit exceeds \$5000 dollars." The Respondent's letter also included a list of damages itemized as follows:

- a. No carpeting in living room, dining room.
- b. Painted walls in living room, dining room with dark colors never asked permission to do so.
- c. Pet urine stains in entire unit requiring unit to be completely bleached to help eliminate odors.
- d. Trash left out in courtyard area.

- e. Leaks from upstairs bathrooms damaging ceiling in kitchen (I was never notified of any leaks).
- f. All carpeting upstairs was completely destroyed by pet stains (urine, etc.) evidence of rabbits and birds droppings.
- g. Lite fixtures missing parts.
- h. Closet doors not in proper area.
- i. Walls upstairs with bird droppings, closet doors with bird droppings.
- j. Vanities, sinks were filthy dirty and stained, needing replacement.
- k. Oven in kitchen filthy dirty not cleaned. See attached invoices, carpenter work not yet do [sic] I have the final cost.

Attached to the Respondent's June 14, 2002 letter were the following invoices for repair work to the Property: Image Carpets, in the amount of \$2,821.35, Hammed Garcia, in the amount of \$2,236.00, and Presidential Heat & A.C.-1, in the amount of \$260.75.

17. Paragraph 8 of the Leases, entitled "Pets," states that the Complainants were allowed to have pets in the Property during their tenancy. Based on the testimony of Complainant Patricia Henningsen and the Respondent at the hearing, the Commission finds that the Complainants had the following pets in the Property during their tenancy: several cats (including strays), 2 parrots and 3 rabbits.

18. The entire Property had been freshly painted an off-white color prior to the commencement of the Complainants' tenancy. The Respondent did not authorize the Complainants, either verbally or in writing, to repaint any rooms in the Property during their tenancy. However, based on the testimony of Complainant Patricia Henningsen, the Respondent and Commission witnesses, and the photographic evidence (See photographs at pages 51 – 53 of Commission's Exhibit No. 1), the Commission finds that in violation of Paragraph 9, "Maintenance," of the Leases, the Complainants repainted the living room from off-white to forest green with black trim, the dining room from off-white to burgundy with gold trim, and the kitchen from off-white to pink. The Commission further finds that Respondent incurred actual expense, in the amount of \$2,236.15, to clean and repair damaged walls

and to repaint the interior painted surfaces of the Property after the termination of the Complainants' tenancy. The Commission finds that one-third of this amount, or \$745.33, represents costs incurred by the Respondent to repair damage caused to the Property by Complainants in excess of ordinary wear and tear.

19. Based on the testimony of the Respondent and Commission witnesses, the Commission finds that at the time the Complainants vacated the Property, they failed to clean the gutters, which was their responsibility pursuant to Paragraph 9, "Maintenance," of the Leases, and they left the Property in a very unclean and unsanitary condition. The Commission also finds that during their tenancy the Complainants failed to report to the Respondent several plumbing leaks in the Property which resulted in the deterioration of the ceiling and walls in the kitchen and caused the sub-flooring to rot in at least one bathroom. The Commission further finds that after the termination of the Complainants' tenancy, the Respondent incurred actual expense, in the amount of \$1,900.00, to clean the gutters, clean the Property, remove trash and debris, disinfect to remove pet urine and animal feces, replace sub-flooring, and to make necessary plumbing repairs. Therefore, the cost incurred by the Respondent to repair damages caused to the Property by the Complainants in excess of ordinary wear and tear exceeded the full amount of the Complainants' security deposit plus accrued interest.

20. The entire Property had been re-carpeted with "basic grade carpeting," and new vinyl flooring had been installed in the kitchen in the Property, prior to the commencement of the Complainants' tenancy. Based on the testimony of the Respondent and Commission witnesses, and the photographic evidence (See photographs at pages 43 – 53 of Commission's Exhibit No. 1), the Commission finds that the carpets and the vinyl flooring throughout the Property had been soiled by pet urine and feces and damaged (cigarette burns and paint stains) far in excess of ordinary wear and tear by the Complainants during their tenancy. However, in light of the Commission finding that the cost incurred by the Respondent to repair other damage in the Property exceeded the full amount of the Complainants' security deposit plus interest, the Commission chooses not to make any findings regarding the depreciated value of the carpeting or vinyl flooring at the time the Complainants vacated.

21. On three (3) separate occasions during their tenancy, the Complainants hired and paid contractors to repair and maintain the HVAC unit at the Property, totaling \$394.00. The needed maintenance and repairs were never reported to the Respondent, as required by Paragraph 9, "Maintenance," of the Leases, and the Complainants never sought reimbursement for the expenses incurred.

22. Regarding the Complainants' allegation that the water heater in the Property was defective during the last week of their tenancy, the Commission finds that the Respondent had the water heater repaired the day after the condition was reported by the Complainants.

23. By letter dated June 14, 2002, within 45 days after the termination of the Complainants' tenancy, the Respondent advised the Complainants that he was withholding their entire security deposit to repair damage caused to the Property by them in excess of ordinary wear and tear. Respondent's notice included an itemization of those damages and the following statement: "Because of the above list of items your security deposit will not be returned, total amount of damage to the unit exceeds \$5000 dollars."

24. The Respondent failed to advise the Complainants of the amount of interest which had accrued on their security deposit, which sum is \$219.60.

CONCLUSIONS OF LAW

Accordingly, based upon a fair consideration of the testimony and evidence contained in the record, the Commission of Landlord-Tenant Affairs concludes:

1. The Respondent altered the Leases by changing the date late payments would be charged from ten (10) days to five (5) days in violation of Section 29-27(i) of the County Code, thereby creating a defective tenancy. The Respondent has similarly created a defective tenancy for any other residents of Montgomery County renting properties from Respondent pursuant to a lease which has been similarly altered. However, the Complainants failed to demonstrate that they ever paid an improper late fee to the Respondent at any time during their tenancy.

2. Respondent altered the Leases by increasing the amount due from Complainants for each repair from \$50.00 to \$75.00 in violation of Section 29-30(a)(3) of the County Code, thereby creating a defective tenancy. Respondent has similarly created a defective tenancy for

any other residents of Montgomery County renting properties from Respondent pursuant to a lease which has been similarly altered. However, the Complainants failed to demonstrate that they ever paid an improper maintenance fee to the Respondent at any time during their tenancy.

3. Respondent altered the Leases by reducing the interest on the security deposit from 4% to 3% in violation of § 8-203(e)(1) of the State Code, thereby creating a defective tenancy. Respondent has similarly created a defective tenancy for any other residents of Montgomery County renting properties from Respondent pursuant to a lease which has been similarly altered.

4. The Respondent did not alter the Leases to change the amount of a late fee from 5% to 10% as alleged by the Complainants, and the Complainants failed to demonstrate that they ever paid an improper late fee to the Respondent at any time during their tenancy.

5. The Complainants violated Paragraph 9, "Maintenance," of the Leases by repainting several rooms in the Property during their tenancy without the Respondent's knowledge or permission.

6. The Complainants violated Paragraph 9, "Maintenance," of the Leases by failing to report at least three plumbing problems to the Respondent during their tenancy, which resulted in damage to the Property.

7. The Complainants damaged the Property in excess of ordinary wear and tear as a result of their tenancy, and the Respondent incurred actual expense to repair that damage which sum exceeded the Complainants' entire security deposit plus accrued interest.

ORDER

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby orders the following:

1. The Complainants' request for a refund of their \$915.00 security deposit plus \$219.60 in accrued interest is DENIED.

2. Respondent must notify all tenants in rental properties he owns, operates or manages in Montgomery County, Maryland that:

- (A) Pursuant to Section 29-27(i) of the County Code, late fees cannot be assessed until the rent is at least 10 days late, not 5 days as stated in their lease;
- (B) Pursuant § 8-203(e) of the State Code, interest on their security deposit accrues at a rate of from 4% per annum, not 3% as stated in their lease;
- (C) Pursuant to Section 29-30(a)(3) of the County Code, that if they fail to perform required maintenance, they may be charged \$50.00 for the actual cost incurred per maintenance item, not \$75.00 as stated in their lease; and,
- (D) If they believe that they have paid any improper late fees or maintenance fees, they can file a complaint with the Office of Landlord-Tenant Affairs, 100 Maryland Avenue, 4th Floor, Rockville, Maryland 20850.

3. Respondent must provide the Department with copies of all such notices sent to his tenants.

The foregoing decision was concurred in unanimously by Commissioner Carol Bergen, Commissioner Mattie Ligon, and Commissioner Jeffrey Burritt, Panel Chairperson.

To comply with this Order, Respondent, Danny H. Schappell, must forward to the Office of Landlord-Tenant Affairs, 100 Maryland Avenue, 4th Floor, Rockville, MD 20850, within thirty (30) calendar days of the date of this Decision and Order, copies of all notices to current tenants as required by this Order.

The Respondent, Danny H. Schappell, is hereby notified that Section 29-48 of the County Code declares that failure to comply with this Decision and Order is punishable by a \$500.00 civil fine Class A violation as set forth in Section 1-19 of the County Code. This civil fine may, at the discretion of the Commission, be imposed on a daily basis until there is compliance with this Decision and Order.

In addition to the issuance of a \$500.00 civil fine Class A violation, should the Commission determine that the Respondent has not, within thirty (30) calendar days of the date of this Decision and Order, made a bona fide effort to comply with the terms of this Decision and Order, it may also refer the matter to the Office of the County Attorney for additional legal enforcement.

Any party aggrieved by this action of the Commission may file an administrative appeal to the Circuit Court for Montgomery County, Maryland within thirty (30) days from the date of this Decision and Order, pursuant to the Maryland Rules governing administrative appeals.

Jeffrey Burritt, Panel Chairperson

Commission on Landlord-Tenant Affairs